

July 2, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

**REPORT AND DECISION ON
SUPPLEMENTAL CONDITIONAL USE PERMIT APPEAL**

SUBJECT: Department of Development & Environmental Services File No. **L96AC022**

TIMBERLAKE CHRISTIAN FELLOWSHIP

Appeal of
Supplemental Conditional Use Permit Decision

Location: West side of 236th Avenue NE, between NE 41st Street and NE 47th Street
(if both streets were extended)

Applicant: TimberLake Christian Fellowship, *represented by*
Richard Wilson, Esq
1221 Second Avenue, Suite 500
Seattle, WA 98101-2925
Telephone (206) 623-1745 Facsimile (206) 623-7789

Appellants: Citizens for Responsible Rural Area Development, *represented by:*
Keith Logan **Steve Shifton**
24123 NE 45th Street 23214 NE 41st Lane
Redmond, WA 98053-8456 Redmond, WA 98053
Telephone (425) 868-8834 Telephone (425) 868-0121
Facsimile (425) 868-7042

**King
County:** Department of Development & Environmental Services, *representing by*
Greg Borba
900 Oakesdale Avenue SW
Renton, WA 98055
Telephone (206) 296-7118 Facsimile (206) 296-7051

SUMMARY OF DECISION:

Department's Preliminary:	Deny Appeals
Department's Final:	Modify CUP Conditions
Examiner:	Deny SEPA Appeal, Remand CUP

Remand:

Department's Preliminary:	Deny Appeal
Department's Final:	Deny Appeal
Examiner:	Deny Appeal, modify CUP Conditions

PRELIMINARY MATTERS:

Application filed:	September 27, 1996
Date completed:	April 10, 1997
Appeals received by Examiner:	March 10, 1998

Remand:

Notice of Appeal received by Examiner:	April 26, 1999
Statement of Appeal received by Examiner:	April 26, 1999

EXAMINER PROCEEDINGS;

Prehearing Conference:	April 9, 1998
Hearing opened:	May 21, 1998
Hearing Continued:	July 15, 16, 17 and 20, 1998
Record Closed:	July 27, 1998

Remand:

Hearing Opener:	June 7, 1999
Hearing Continued:	June 15 and 17, 1999
Hearing Closed:	June 17, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Conditional uses
- Visual impacts
- Compatibility of uses

SUMMARY:

The supplemental decision by DDES that the visual impacts of church development will not be incompatible with the Rural Area is upheld, and the appeal is denied.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On August 6, 1998, Margaret Klockars, acting as a King County Hearing Examiner *Pro Tempore*, issued a decision on appeals of a threshold determination under SEPA and a conditional use permit for the proposed TimberLake Christian Fellowship church facility. The site is located in the Rural Area east of Redmond, west of 236th Avenue Northeast and north of SR 202. The 63-acre parcel is heavily forested and slopes toward the southwest where it encounters the stream channel for Evans Creek running parallel to the project's western boundary. As conditioned within the Examiner's August 6, 1998, report, the church development constructed in two phases would encompass 80,000 square feet of building floor space with a maximum of 630 parking stalls.
2. The Hearing Examiner *Pro Tempore* denied the SEPA appeal filed by the Citizens for Responsible Rural Area Development and approved the conditional use permit in all respects except for the finding required by KCC 21A.44.040.A that "the conditional use is designed in a manner which is compatible with the character and appearance of the existing, or proposed development in the vicinity of the subject property." The Examiner *Pro Tempore* ruled that the hearing record was insufficient to support an affirmative conclusion regarding the proposal's visual compatibility with neighborhood rural development and remanded the application back to the Department of Development and Environmental Services ("DDES") for the limited purpose of further considering "the view of structures, parking lots, and roadways on the site from the Rural Area...". The Examiner *Pro Tempore* concluded that if DDES on remand "determines that these development features will not be visible from the surrounding Rural Area, or with the imposition of additional conditions or revised conditions it can be satisfied that those features will not be visible, the CUP should be granted" subject to 34 listed conditions.
3. On remand the Applicant submitted to DDES on December 17, 1998, a "Landscape Buffering and Visual Impact Analysis" performed by the Weisman Design Group, a landscape architecture and planning firm (Exhibit R-5). This document contains a visual analysis of the proposal and has become the focal point for further discussion and debate concerning the proposal's visual impacts. Based on the Weisman analysis, the church proposal has been modified to include additional perimeter plantings, a rockery along the west side of the 236th Avenue Northeast frontage near the proposed sanctuary, elimination of an easterly parking area, realignment of the proposed northern site driveway, and an increase in the width of the southern boundary buffer from 20 to 25 feet.
4. After review of the Applicant's visual analysis and resultant modifications to the church proposal, DDES on March 19, 1999, issued a supplemental conditional use permit based on findings of visual compatibility consistent with the requirements of KCC 21A.44.040.A. A timely appeal of this second DDES supplemental decision was filed by Citizens for Responsible Rural Area Development, represented by Steve Shifton

and Keith Logan. The Appellant's appeal statement contains a number of detailed allegations representing that the visibility standards set out in the Hearing Examiner *Pro Tempore's* August 6, 1998, decision will not be met by the church proposal and that the mitigation measures offered by the Applicant are neither adequate nor feasible.

5. The public hearing on the second TimberLake Christian Fellowship CUP appeal was opened on June 7, 1999. At that time the previous record established by the Hearing Examiner *Pro Tempore* in support of her August 6, 1998, decision was incorporated into this proceeding by reference. Except where specifically modified herein, the findings and conclusions contained in the Examiner *Pro Tempore's* August 6, 1998, decision, as modified by the supplemental decision issued by DDES on March 19, 1999, are found to be correct and are also incorporated herein by reference. Readers seeking a complete discussion of all issues affecting this proposal are referred to these two earlier documents.
6. Even though the Applicant's site plan envisions church development to be concentrated within 18 acres on the eastern half of the property, potential visual impacts have been evaluated as they relate to offsite locations on all sides of the parcel. The Weisman visual impact analysis characterizes residential development in the area in the following manner:

"The residences that surround the property can be separated into three groups, each with a different relationship to the site. To the west are 16 neighbors who view the church property through their back yards. Approximately 300 to 900 feet of vegetated open space, including Evans Creek and in some cases the tributary stream, are located between the development area of the church and these properties. To the southwest are three lots with two homes, one of which will soon be torn down and replaced by a new home. These properties are accessed by an easement across the church property. To the east are eight residences that view the property from across 236th Avenue Northeast. Additional existing development to the south of the TimberLake property consists of a supermarket, a gas station, and a public storage facility located along Redmond-Fall City Road."

7. A primary concern of the visual impact analysis has been the properties located along 236th Avenue Northeast adjacent to and east of the site. The eight residences analyzed in the Weisman report may be grouped into three categories. Furthest north are the four properties--Mills, Ashok, Dickinson and Baskett--that are located on Northeast 45th Place. Northeast 45th Place lies directly east of the north parking lot main entrance, with the church building to the southwest. At the south end of the 236th Avenue Northeast frontage are the Capelouto and Dennis residences located generally opposite the existing southern driveway entry. South of the Dennis residence is the Olsen property, which was not analyzed in the Weisman report but discussed by the Appellants. Finally, in the central portion of the 236th Avenue Northeast frontage is the Fox residence directly opposite the main church building, with the Stoner residence some 400 feet to its south.
8. The four northernmost residences on Northeast 45th Place will have a direct view of the church's north parking lot driveway. Views of the two parking lots accessed by this driveway are capable of being obscured by the Applicant's proposed 50-foot buffer along 236th Avenue Northeast, which will be retained in its natural vegetative state and

- supplemented with infill evergreen plantings at heights between 12 and 20 feet. The infill plantings should be relatively effective upon installation at blocking parking lot views inasmuch as the topography slopes downward to the west. Thus, only low level plantings are required for screening effectiveness. These screening and topographical features, plus existing vegetation on the parcels lying east of 236th Avenue Northeast, should also effectively block views of the main church building lying at a distance of approximately 400 feet from the nearer residences and at a maximum height of between 45 and 50 feet above finished grade. The worst case scenario for these four properties is that initially the Ashok residence may have a filtered view of the upper portion of the main church building during a 3 to 5 year period when trees within the planted screen south of the entrance driveway are maturing.
9. All observers agree that the property along 236th Avenue Northeast with the greatest potential risk for view impacts is the Fox residence located directly opposite the main church building. The distance from the Fox house to the easternmost façade of the main church building will be about 300 feet. The Fox residence features a clear view west through its driveway cut as well as relatively sparse onsite vegetation. In response to DDES concerns about view impacts to the Fox residence, the Applicant developed its Option 2 approach which entails construction of a berm between two elevated rockery walls running parallel to 236th Avenue Northeast within the adjacent onsite buffer. This berm would allow the finished grade within the buffer opposite the Fox residence to be raised so that nursery stock evergreens could be planted to create an effective visual screen. As described by the Applicant's project manager within Exhibit No. R-18, "the rockery, berm and landscaping would be constructed and planted to a height that would completely block any view of the church from the Fox property."
 10. The view of the church building from the residence on the Stoner property at 9070 Northeast 43rd Street is likely to be minimal or nonexistent even without additional buffer plantings due to intervening vegetation both on the adjacent property to its north and on the church property within the wetland tract. A person standing at the entrance to the Stoner driveway on 236th Avenue Northeast, however, will probably obtain a filtered view of the church building.
 11. The view of the church building from the Capelouto residence would be similar to that experienced at the bottom of the Stoner driveway, except that it would be another 250 feet further removed for a total distance of approximately 700 feet. The expanded buffer width afforded by the wetland tract ought to provide the Capelouto residence with reasonable view protection, subject to the qualification that during winter there may be areas of deciduous dominance where glimpses of the church building may be obtained. Further south the views from the Dennis and Olsen residences would be of the southern access driveway only, with the full width of the wetland tract intervening between these offsite locations and the proposed church building.
 12. Directly south of the TimberLake property is a commercial site located at the northwest corner of SR 202 and 236th Avenue Northeast that is dominated by a large Albertson's grocery store and a BP gas station. The Appellants have suggested that there may be a view corridor from a mobile home located on the south side of SR 202 across the Albertson's parking lot, through the combined commercial and church buffers, and across the onsite drainfield and drainage facilities to the westernmost portion of the proposed church building. Accepting for the purposes of argument that such a view corridor exists

- and the intervening buffer would not entirely block the view, a small portion of the church would be visible at a distance of approximately 1700 feet. But the dominant viewscape for such a mobile home would continue to be the SR 202 arterial in its front yard plus about 500 feet of nearby commercial development. In such context the ability to detect a small upper portion of the proposed church above the trees in the far distance can only be regarded as an inconsequential additional view impact.
13. Due to the location of Evans Creek and its tributary stream in the western and northwestern portions of the site, no credible showing has been made that church development will have adverse visual impacts on the Canterbury neighborhood to its west. The nearest residence will be about 350 feet from the edge of the south parking lot and about 650 feet from the building structure. The creek system with its required natural vegetation buffers will provide an effective visual screen between the church and the neighborhood to the west. In like manner, a large expanse of woodlands lies between the proposed development portion of the church property and offsite parcels to the north, the nearest of which are currently undeveloped. Any attempt to ascribe visual impacts based on future offsite development scenarios to the north would be purely speculative.
 14. The analysis performed by the Weisman Design Group also considered the visual impacts of church development as experienced by traffic traversing 236th Avenue Northeast along the eastern boundary of the site. The study concluded that the natural slope of the terrain downward from north to south implies that if all site vegetation were removed, the church building would be more visible to traffic approaching from the south than from the north due to the topographical factor. As analyzed by Weisman, the higher risk of view exposure of the proposed church building from the south will not be actualized because of the massive expanse of intervening forested vegetation provided by the wetland and its buffer. Conversely, for traffic approaching from the north, most site development will lie below existing road grade.
 15. The Applicant's consultants were required to revise their initial analysis, however, for that portion of 236th Avenue Northeast directly east of the proposed church which lies at approximately the same elevation. The rockery walls proposed in this location will require the removal of a 20-foot strip of existing vegetation and will expose passing traffic to filtered views of the church building over about a 100-foot stretch during at least the initial years of site development. In this regard Exhibit No. R-11, which embodies a revision to Exhibit No. R-5, concluded that "a person driving south on 236th Avenue Northeast would have a very limited view of the proposed church building, parking lots, and onsite roads directly after construction and during the initial growing period of the newly planted trees." Relevant to review of this portion of the analysis is a video submitted by the Appellants that demonstrates that a moving vehicle passing by a permeable vegetated screen will have a more clear view of structures behind the screen than from a stationary viewpoint. Accordingly, as long as a filtered view remains along this 100-foot stretch, the element of vehicular motion will increase the visual impact rather than decrease it.
 16. Appellant Keith Logan also lives on the east side of 236th Avenue Northeast, but further up the hillside at a distance of nearly 2000 feet from the church property. Mr. Logan has submitted exhibits and supporting testimony designed to demonstrate the existence of view impacts from church development on his property, but in general they lack the precision necessary to support affirmative findings. Although Mr. Logan lives above the

church property, the actual elevation difference cannot be reliably ascertained from this record. In a February 22, 1999, document submitted to DDES by Mr. Logan through his architectural consultant, Lane Williams, he represented the elevation of his house as being 380 feet above sea level, which would make it approximately 230 feet above finished grade for the church structure. In a later exhibit, however, based on a purported 1936 survey marker, his estimated house elevation was boosted to 500 feet.

In addition, aerial photographs of the area show an unbroken belt of forested vegetation lying between Mr. Logan's residence and the church property. Mr. Logan's analysis has made no attempt to account for the effect of this intervening vegetation on screening church development.

17. Probably the most useful of Mr. Logan's exhibits are the sets of photographs that he has taken from his home looking west towards the TimberLake property. Exhibit No. R-32 is the "plastic material in distant tree" series of photographs in which a scrap of plastic bag caught in the upper branches of a tree has been photographed both up close and from Mr. Logan's patio. Mr. Logan identified the tree in question as one lying about 50 feet deep into the Applicant's property, at a location lying west of 236th Avenue Northeast and south of the Fox driveway.
18. Mr. Logan estimated the height of this scrap of plastic to be about 60 feet above ground level. The photographs in Exhibit No. R-32 are useful because they were taken in winter when deciduous foliage was absent, and they lend an element of real world context to the relationship between Mr. Logan's property and the church site. From the vantage of Mr. Logan's patio, the scrap of plastic appears on the horizon at a point about 10 to 15 feet above ground level, within a setting of dense forest vegetation against a backdrop of a distant wooded hillside. It appears within a gap between large and small conifer trunks.
19. Exhibit No. R-33 consists of photographs taken more recently by Mr. Logan from his property of a balloon that he situated on the church property in generally the same location as the scrap of plastic. In this series the deciduous foliage is in full display, and the view window through to the church property from Mr. Logan's patio is quite small. Photographs R-32.A and R-33.B purport to show the same view toward the Applicant's property from Mr. Logan's patio. Comparing the two, one may conclude that the balloon was floated at a slightly greater height than the scrap of plastic previously photographed.
20. Mr. Logan's architectural consultant Lane Williams offered the unsupported opinion that Mr. Logan from his property will see the major part of the church rooftop and some of the parking areas. While we can agree with Mr. Williams that new 20-foot tall buffer plantings by the Applicant on the site's eastern boundary will not screen views from Mr. Logan's residence, the real significance of this fact, as Mr. Logan's photographs demonstrate, is that intervening vegetation between his house and 236th Avenue Northeast will block views of church development regardless of the presence or absence of additional lower elevation buffer plantings. When viewed from Mr. Logan's patio, the church roof will be both lower and more distant than either the scrap of plastic or the balloon, in which case it will be either totally or mostly screened from view by intervening vegetation.
21. Mr. Logan is probably correct in believing that the nighttime effects of lighting on the Applicant's property will be more noticeable visually than the daytime views. Just as

- during daylight Mr. Logan cannot see the Albertson's store or the BP station from his property but can observe a nighttime glow in that direction, so too there is a likelihood of some nighttime glow from the church property when it is in use. However, the CUP conditions require that nighttime lighting impacts from the site be no greater than those for the Albertson complex, and the evidence is that the Applicant will meet or exceed that requirement. As described by the Applicant's architect, few windows will be located on the east side of the church, parking lot lighting will be at low elevations and the minimum number required to safely illuminate the lots, interior lighting will be directed downward and shielded by tinted windows, and lights will be turned off by 10:30 in the evening.
22. In contrast with Mr. Logan, the three lots owned by Appellant Steve Shifton are directly adjacent to the southwest corner of the TimberLake property, being bounded by the Applicant's site on two sides and accessed through the TimberLake property over a 60-foot easement. The easternmost 500 feet of the access easement currently serving the Shifton residences will be paved by the Applicant to also provide access to the church's south parking lot. There are currently two houses on the Shifton parcels, with two more planned.
 23. The southwestern extension of the proposed church building will lie at a distance of approximately 800 feet from the Shifton parcels at a 50-foot higher ground elevation. Along the sight line between the proposed church structure and the Shifton parcels also lie Phase 1 and 2 parking lots totaling approximately 300 parking stalls, a biofiltration swale, a drainfield reserve area, and a 50-foot vegetated buffer bordering the Shifton easement line. If the drainfield reserve is not cleared for development use, it and the adjacent buffer will provide about a 350-foot width of forested vegetation lying between the Shifton houses and the southern edge of the parking lot, a vegetated mass that should entirely screen both the parking lot and the church buildings.
 24. Future visual impact issues may arise with Phase 2 church development if expansion of the septic system requires use of the drainfield reserve area. At that time, depending on their actual location, future houses on Lots 1 and 3 of the Shifton property could have direct views of the church facilities that would be screened only by the 50-foot buffer provided by the Applicant near the southwest corner. While the new conifer plantings proposed to be installed at that time by the Applicant to augment the buffer would probably be effective to screen the parking lots, due to elevation differences between the two sites the new plantings initially would not screen the upper levels of the church structures. The tallest portions of the church sanctuary are planned to be more than 90 feet higher than ground level on the Shifton parcels and likely would be visible through the thinner portions of the 50-foot native vegetation buffer from second story windows of the new Shifton houses. It is also true, as alleged by Mr. Shifton, that residents on his parcels will be able to see the church's drainage facilities, parking lots and buildings from various locations on the easement driveway while walking and driving to and from 236th Avenue Northeast.
 25. In the context of questioning the feasibility of irrigating the many landscaping plantings proposed as mitigation by the Applicant, Mr. Shifton made reference to the limited water supply committed to the church property by the Union Hill Water Association. The current water certificate issued by Union Hill to the Applicant is based on usage rates for

the twelve 5-acre residential parcels that could be carved from the site under current zoning and totals approximately 14,400 cubic feet per month.

From the standpoint of direct visual impacts to his property, the limitation on the quantity of water available to the church site likely benefits Mr. Shifton in that it renders less probable the future need for developing the drainfield reserve area. Clearing the drainfield reserve area probably comes into play only if the Union Hill Water Association is able to increase its water allocation to the church site and the church's optimistic future growth rates also are met.

26. Even if drought-tolerant native species are employed, it is clear that the church will experience significant irrigation needs during at least the first two or three years of the development process while the new plantings become established. Appellants have argued in view of these irrigation needs and the limited water available from Union Hill that the Applicant's landscaping proposals should be regarded as infeasible and the visual buffering benefits anticipated therefrom beyond realization. Our view is that the required irrigation of church landscaping is not an issue of feasibility so much as proper planning and management. With the use of drought-tolerant species that will become established after a few years of initial watering, there are a number of short term irrigation options open to the Applicant. These include drilling an onsite well, trucking water in from offsite, pumping water from stormwater detention ponds, and increased water retention through intensive mulching. It is also possible that during the construction phase some of the unused domestic allocation from Union Hill Water Association may be diverted to irrigation purposes. These matters are not incapable of solution and can be adequately managed through appropriate conditions.
27. Finally, the Appellants have raised a number of peripheral issues that deserve some mention. With respect to the Applicant's offer to augment existing offsite plantings on residential properties east of 236th Avenue Northeast, DDES was correct in its decision to analyze offsite visual impacts as they would occur in the absence of such plantings. Nonetheless, if such plantings are made, they can only diminish offsite visual impacts. Appellants have also pointed out that some buffer plantings and rockery construction have been proposed by the Applicant to occur within the public right of way for 236th Avenue Northeast. While such occurrences are not uncommon, clearly they require prior authorization from King County road officials; if such approval is not forthcoming the Applicant's plans will need to be revised so that all required plantings and construction occur onsite.
28. The conditional use standard stated at KC 21A.44.040.A requires visual compatibility between the proposal and existing or proposed development in the vicinity. This standard requires review of actual proposed (but not yet constructed) development such as the two new residences planned for the Shifton properties but does not justify speculation over future offsite development or clearing that is simply a theoretical possibility. After the church is built, neighbors who clear intervening vegetation to create a view of the TimberLake property where none previously existed will do so because they find the view acceptable. On the other hand, mitigation proposals for view screening that will only become effective after a quantity of buffer growth has taken place need to be evaluated in such context. A view mitigation that becomes more effective over time may lessen the severity of an adverse impact, but a recognizable impact nonetheless exists.

29. In like manner, design features such as color, height, and variation in surfaces and forms affect the visual impact of the structure on offsite observers. Use of muted earth colors tends to reduce offsite impacts, as do design modulations that counteract the apparent massiveness of the structural form. Zoning Code height limitations apply to the project in the absence of specific adverse impacts associated with structural heights in identified locations that require a more restrictive standard.

CONCLUSIONS:

1. In the decision issued March 19, 1999, the DDES responsible official found that the TimberLake church proposal was visually compatible with the character and appearance of existing or proposed development in its vicinity. The evidence submitted by the Applicant to DDES was sufficient to support the conclusions that it reached. On appeal the Appellants have the burden of proof to demonstrate by a preponderance of the evidence that the DDES decision was legally incorrect.
2. In addressing the visibility standard derived from KCC 21A.44.040.A the Hearing Examiner *Pro Tempore* in her August 6, 1998, decision suggested that if the church "building, parking lots and roadways are readily apparent outside of the subject site, the rural landscape would be altered and, therefore, the design would not be compatible with the visual element of the existing and proposed character" of the surrounding area. In remanding the application back to DDES for further review of the compatibility issue, the Examiner *Pro Tempore* further stated that "if the Department determines that these development features will not be visible from the surrounding Rural Area," the conditional use permit should be granted.
3. The Appellants have seized upon the "not visible" language within the August 6, 1998, decision as a basis for asserting that the standard applicable to the instant review must be that if any feature of the proposed church development is visible from any place offsite within the Rural Area, the conditional use permit must be denied. This radical interpretation underlies some of the Appellants' more improbable visual impact scenarios, including the attempt to demonstrate that a sliver of the western façade of the church may be visible from a mobile home 1700 feet to the south over the tops of intervening trees, through the Albertson's parking lot and across SR 202, a busy principal arterial.
4. As all parties have recognized, a standard of complete invisibility would be impossible for the church to meet--an insight which should have also suggested that such an austere rule would not be legally defensible. At the very least, a conditional use applicant should be allowed to create visual impacts equivalent to those associated with permitted development activity within the Rural Area. As noted, the 63-acre church property would support the permitted development of twelve 5-acre residential properties. In addition, the Rural Area entertains as permitted uses agricultural and forestry activities, stables, horse arenas and elementary schools, all of which entail some level of visual impact offsite. Moreover, the same constitutional protections that led the Examiner *Pro Tempore* to conclude that the County would not be allowed to limit the size of the proposed church structure likewise would restrict the County's authority to regulate visual impacts beyond a level supported by compelling public interest.

5. Furthermore, a fair reading of the Examiner *Pro Tempore's* August 6, 1998, decision in its entirety does not support the kind of strict invisibility standard suggested by the Appellants. For example, on page 6 within Finding No. 24 the Examiner *Pro Tempore* observes that "the proposed development...could insert an institutional element into the rural residential character of the immediate surroundings. A building the size proposed, if visible, would dominate the visual landscape." In a similar vein, within Finding No. 30 on page 8 in discussing the diversity of building materials proposed by the Applicant the Examiner *Pro Tempore* states that employment of such materials "would help break down the visual bulk and scale of the building." Further references indicating that the review for visual compatibility is premised on issues of size and bulk are found at Conclusion No. 5 on page 9, and within Conclusion No. 12 on page 11 in the discussion of whether the visual character of the rural landscape would be unduly disrupted or altered by the proposed use.
6. What is missing from the parties' discussion of the visibility issue--not only by the Appellants but DDES and the Applicant as well--is any analysis of exactly what should not be seen. The Applicant offers three different quantitative levels of visibility and assures us that whatever the standard is, it must be a reasonable one. DDES, following the Applicant's lead, attempts to articulate a "substantially not visible" standard. While these elaborations have some usefulness, they are deficient in that they offer no qualitative tools for evaluating compatibility, i.e., the acceptability, or lack of it, of what is being seen.
7. Our conclusion is that there are two elements to the visual compatibility analysis. The first element is how much is being seen, which corresponds to the various quantitative standards discussed by the parties to the appeal. The second element, however, seeks to define qualitatively what is being seen; it leads to the derivative question of whether that something is or is not harmonious with the rural experience. For example, a barn in a pasture is a large and visually obvious development feature, but because one expects to find barns in a Rural Area, their presence is not considered an adverse visual impact incompatible with rural character. On the other hand, a two-story video arcade would be obviously incompatible with the rural character even though its actual bulk and dimensions were about the same as a barn.

In light of the foregoing, our conclusion is that the proposed church development would be unduly disruptive of the rural landscape and therefore visually incompatible with the rural character of the area if it is visible in such a manner and degree that its massive institutional character is readily apparent. This analysis takes into account the qualitative nature of the development being observed, its distance from the viewer and apparent size, the context in which it appears, and the effectiveness of screening and other proposed mitigations. It is also consistent with the broader discussion of visual compatibility contained in the Hearing Examiner *Pro Tempore's* August 6, 1998, decision.

8. For purposes of determining what constitutes rural character, the existence within the neighborhood of nonconforming urban development such as the Albertson's shopping center must be disregarded. We note that under the recently repealed 1985 King County Comprehensive Plan the TimberLake site as well as the Albertson's complex were previously designated Urban. Nonconforming urban development within the Rural Area

is relevant to the review of adverse visual impacts for context, and the existence of an established urban context in a specific locality may render minimal the consequences of additional visual impacts of a nonrural character. For example, even if one were to assume that at a distance of 1700 feet the TimberLake church buildings were fully visible to residential properties south of SR 202, the intervening urban character of the arterial and Albertson's shopping center would require a finding that the additional visual impacts caused by the distant church structures were rendered less consequential by the context in which they appear.

9. Applying the visual standard articulated above, it is clear that at least a few of the issues raised by the Appellants are easily resolved. The placement of three two-lane, paved entry driveways into the site along a 2000-foot frontage on the west side of 236th Avenue Northeast is not a visual impact inconsistent with the area's Rural character. In the same manner, rockery retaining walls below six feet in height are also common in the Rural Area and their employment by the Applicant does not constitute disharmonious development within the Rural Area.
10. The visual issues of real concern with respect to this application relate to whether there will be any views of either the building or the parking lots that are so poorly screened that the massive institutional nature of such structures is disclosed to the observer. Such concerns are of particular importance along the 236th Avenue Northeast site frontage and from the Shifton parcels because these potential viewpoints are sufficiently close to the church site that inadequate visual buffering could result in an urban character view that dominates the affected viewscape.

The natural vegetation buffers to be maintained by the Applicant, as enhanced by the plantings and rockeries proposed, will effectively screen views from existing residences on 236th Avenue Northeast. While elements of the upper portion of the church main building may be visible through the tree canopy, such views should be sufficiently fragmentary that the size and bulk of the principal church structure will not be readily apparent. Visual impacts along 236th are also mitigated by proposed modulations in building materials employed, the use of non-obtrusive colors, the irregular building footprint, and limitations on lighting impacts. Because the property slopes downward toward the west and south, most of the parking lots will be below grade and new evergreen plantings will be effective to provide immediate infill screening.

11. Views from the Shifton residences will only encounter structures uncharacteristic of Rural development if the drainfield reserve area is cleared. In such instance infill plantings along the screen at the southwest corner, if properly executed, ought to be sufficient to block views of low level parking lot development. With respect to the main building, due to elevation differences such new plantings would not likely completely obscure the upper portions of the church structure. If the remaining 50-foot natural buffer is at some locations devoid of conifer growth, views of the top of the church building may occur until the supplementary plantings have grown taller. This scenario underscores the importance of requiring buffer augmentation with new plantings at the earliest indication that the reserve drainfield that may be cleared, and the conditions have been modified to reflect this need.
12. Views of church development from the access easement will be experienced by Mr. Shifton and his fellow residents once they leave the portion of the driveway which serves

- their properties and enter onto the portion shared with the church access route. Since there is no evidence that Mr. Shifton has an easement for anything more than access and utilities, no important regulatory consequences ought to attach to pass-by views from the access driveway. The easement remains part of the church property, and Mr. Shifton's right is simply one of use. Mr. Shifton's access use is not impaired by view impacts, and to give them regulatory effect would place the County in the untenable position of unilaterally creating in Mr. Shifton's favor an expanded easement right.
13. There is no compelling evidence that Mr. Logan from his residence will actually be able to see the structures on the TimberLake site. Based on the photographic evidence, the most that seems likely is an occasional glimpse of the upper church rooftops during winter when the deciduous foliage is absent. At the distances involved, this would be a minimal impact. More credible is Mr. Logan's concern with nighttime lighting effects, but the Applicant has responded to these concerns in a satisfactory manner, and the impacts at night on Mr. Logan should be no greater than those experienced from Albertson's, and probably less.
 14. Due to the effects of motion motorists along 236th Avenue Northeast may have a recognizable glimpse of the main church building and perhaps the northern parking lot during the three to five years necessary for the buffer infill plantings to develop. Over time these impacts will diminish. Moreover, due to their transitory nature, visual impacts affecting passing motorists are intrinsically less consequential than those experienced by permanent residents.
 15. The Appellants have failed to meet their burden of proof to demonstrate that the proposed TimberLake church conditional use is designed in such a manner as to be incompatible visually with the character and appearance of existing or proposed development in the adjacent Rural neighborhood. Therefore, the appeal must be denied, and the decision of the DDES responsible official within the supplemental decision dated March 19, 1999, granting the conditional use permit is affirmed.

DECISION:

The appeal is DENIED.

ORDER:

The conditional use permit for TimberLake Christian Fellowship is GRANTED, subject to the following conditions:

1. The maximum total gross floor area of the church facilities shall not exceed 80,000 square feet. Any future floor area expansions that would exceed the 80,000 square foot limitation shall require CUP approval to authorize such expansion.
2. The approximately 12.5-acre area identified for future subdivision on the applicant's revised site plan submitted July 15, 1998 (Hearing Examiner's Exhibit 93) may be approved for subdivision provided that no other terms and conditions of the approved CUP specified herein shall be reduced or violated as a result of any such subdivision; except that one access road meeting then-applicable King County Road Standards may

be constructed through the required buffer along 236th Avenue N.E. at the northerly end of the site to provide access to any such future subdivision.

3. The church facility, accessory driveways and accessory parking areas shall be constructed in the general locations shown on the Applicant's revised site plan contain in the December 17, 1998, Landscape Buffering and Visual Impact Analysis (Exhibit No. R-5), as further elaborated in Exhibits R-27 and R-47.
4. The church facility shall be constructed consistent with the preliminary elevation drawings dated February 4, 1999 (Exhibit No. R-9). Minor changes to the elevations and height of the building may be allowed provided that compliance with the visibility standard and vegetative buffer conditions stated in Condition No. 7 below is not reduced. Under no circumstance shall the maximum height of the church facility exceed 45 feet, as measured pursuant to the Zoning Code [KCC 21A.12.050(C)]. The exterior façade of the church facility shall use a combination of different building materials and colors that are compatible with rural residential construction. This condition does not preclude the use of concrete block or similar materials on portions of the exterior façade.
5. Uses and hours of operation of the church facility shall be consistent with the programming activities described in the October 17, 1997, letter submitted by the applicant's representative (Hearing Examiner Exhibit 21) except as further restricted in these conditions.
6. The maximum number of on-site parking spaces shall not exceed 630 stalls. Any future expansion of impervious surfaces to accommodate additional on-site parking shall require CUP approval.
7. The Applicant shall be responsible for providing vegetative screening buffers on the site in order to ensure that the church building, parking lots and roadways are neither visible nor readily apparent from surrounding RA areas. The following conditions shall apply:
 - a. The Applicant shall provide a vegetative buffer onsite and along the 236th Avenue Northeast frontage which is consistent in visual screening effectiveness with the December 17, 1998, Landscape Buffering and Visual Impact Analysis (Exhibit No. R-5), as modified by Exhibits R-8 through R-12, R-18, R-19 and R-27.
 - b. In order to provide the required visual buffering along 236th Avenue Northeast and from the Fox property (Parcel No. 1525069019), the Applicant shall install and implement Option No. 2 as specified in the Applicant's March 3, 1999, submittal (Exhibits No. R-18 and R-19).
 - c. The drainfield reserve area identified on the Applicant's site plan contained in Exhibit No. R-5 shall not be cleared unless required by the Seattle-King County Health Department. If this area is required to be cleared, the Applicant shall try to retain as many existing tall trees adjacent to the internal roadway as possible in order to screen the church facilities from being viewed from the Shifton properties looking towards the northeast.

As shown on Exhibit No. R-27, the supplemental plantings adjacent to the northeast corner of the Shifton parcels shall be installed if either of the following occurs:

- i. The drainfield reserve area is cleared, or
 - ii. The Union Hill Water Association increases the water allocation to the church development above 12 ERU (unless the Health Department states in writing that such increase will not require construction of the reserve drainfield).
- d. Prior to the issuance of a clearing and grading permit and/or a building permit, whichever comes first, the Applicant shall submit to DDES a final landscaping plan prepared by a qualified landscape architect. DDES must review and approve the final landscaping plan before any clearing and grading and/or building permit may be issued for the proposed church facility. Use of the 236th Avenue Northeast right of way for buffer plantings and rockery construction shall be reviewed and approved by the King County Traffic Engineering Section.

DDES may require the Applicant to flag or mark any existing significant vegetation which must be retained, and may also require field delineation of the onsite clearing limits pursuant to the approved landscaping plan. Before issuance of a building permit for the church facility, the Applicant must also post a performance bond with DDES for all its landscaping obligations. Any supplemental plantings required or permitted shall harmonize with native growth and shall be installed by the Applicant during the appropriate planting season within one year after issuance of a building permit for the church facility. After planting, all supplemental plantings on the Applicant's property shall be regularly irrigated by the Applicant during dry weather for at least two growing seasons, in order to establish plant growth. Plantings necessary to maintain the visual screen shall be replaced by the Applicant at the next planting season for the life of the facility.

- e. Prior to issuance of either a clearing and grading or building permit, the Applicant shall submit to DDES an irrigation water budget meeting the requirements of KCC 21A.16.300 *et seq.* The Applicant shall identify the method of irrigation to be employed and the sources of irrigation water. If any Union Hill Water Association water is to be used for irrigation, written consent to such use by the Association shall be provided.
- f. DDES shall conduct an onsite visual inspection of the required vegetative buffers immediately upon final installation, and shall conduct an annual inspection for the first three years thereafter. DDES shall prepare a written report for each required inspection and the report shall be made available to the public upon request. The purpose of such inspections is to ensure compliance with the conditions stated above. If DDES determines that the visual standards are not met, DDES shall have the authority to require the Applicant to install additional plantings to achieve compliance with the conditions stated herein. No clearing and grading or building permits shall be issued for Phase 2 development

until DDES has determined that the visual standards imposed by this conditional use permit have been met.

8. The applicant shall comply with the terms and conditions of the Voluntary Settlement Agreement with WSDOT, signed by the applicant on October 21, 1997 (Exhibit D-28 in the CUP file) to mitigate impacts to SR 202.
9. The applicant shall be responsible for the following road improvements along 236th Avenue N.E.
 - a. Construct Rural Minor Arterial standard improvements along the frontage of the site. Frontage improvements may require additional pavement to transition to the commercial frontage improvements to the south.
 - b. Construct northbound left turn lanes at the two most southerly proposed accesses. Channelization and illumination plans for the left turn lanes shall be reviewed and approved by King County Traffic Engineering Section prior to issuance of a building permit.
10. There shall be no access road constructed on the subject property which connects to N.E. 44th Street and the residential neighborhood known as Canterbury Woods.

11. a. Exterior lighting

All onsite exterior lighting used to illuminate the building, parking areas and walkways shall be shielded to avoid glare impacts on adjacent residentially zoned properties. Church identification signage permitted by the Zoning Code along the 236th Avenue Northeast frontage shall not be lit for nighttime use. No outdoor decorative lighting shall be used to illuminate the exterior architectural features of the building. Light levels shall meet the standards of the adjacent Albertson's grocery store, as verified by a photometric study submitted by DDES. All onsite exterior lighting required or permitted by this condition shall be shown on a lighting plan submitted by the Applicant to DDES, and DDES must review and approve such lighting and the required photometric study before any building permit may be issued for the proposed church facility. Any future changes to exterior lighting shall require photometric verification for compliance with the Albertson's standard. Parking lot lighting shall be limited to 25 feet in height to limit off-property impacts. Driveways and parking lot lighting shall be turned on only from dusk to 10:30 PM.

b. Interior lighting

In order to reduce light and glare emanating from the interior of the building to the outdoors, the following conditions shall apply to interior lighting of areas of the church facility with exterior facing windows: only tinted glass shall be used with a maximum transmittance rating of 59% or less; canopies shall be constructed above entries as shown on the elevation drawings, dated February 4, 1999 (Exhibit No. R-9); and, all interior room lighting shall be designed to focus downward on the interior space.

12. The applicant shall comply with the SEPA mitigation conditions below.
13. The development of this project is subject to all applicable rules, regulations, standards, and codes in effect on April 10, 1997 that are not specifically modified by this CUP. Compliance with applicable drainage standards, health standards, fire and building code standards and other applicable development standards shall be reviewed at the time of building permit application. Compliance with all applicable sensitive area regulations shall also be reviewed at the time of building permit application including, but not limited to Notice on Title, approval of a mitigation plan for filling Wetland C, and provision for required buffers and building setbacks as stated in KCC 21A.24.
14. The Applicant shall submit a site plan, landscape plan, and elevation drawings for review and approval by LUSD staff to ensure compliance with the CUP conditions cited above. The Applicant may submit these plans to LUSD concurrently with a clearing and grading permit and/or a building permit application; or, the Applicant may request LUSD to review and approve such plans as part of a pre-application review prior to submitting permit applications.
15. This action shall become null and void if a building permit(s) for this project is not issued within four years from the effective date of this decision. Pursuant to KCC 21A.42.090(E), this four-year period may be extended by the Director of DDES for one additional year.
16. Kitchen facilities in the church building shall be limited to ordinary residential-level facilities and shall be non-commercial in size and type.
17. No public or private school requiring certification by the Superintendent of Public Instruction shall be operated on site. This limitation shall not apply to daycare activities or to incidental "Sunday-school" type religious instruction throughout the week.
18. No automobile repair facilities shall be located on site.
19. Not more than six organized outdoor events per calendar year (including, but not limited to, picnics, concerts, fairs, and other formal gatherings or celebrations) shall be permitted on site. This limitation shall not apply to informal recreational activities, including hiking and informal sports events associated with the church. The applicant shall maintain an annual list of the six organized outdoor events, and such list shall be available to DDES upon request.
20. Sound levels during, and emanating from, any organized outdoor event on site (as limited by Condition No. 19 above) shall not exceed 49 dBA anywhere on any residential properties abutting the site on the west, southwest, or north. On adjacent residential properties abutting the east side of 236th Avenue N.E., such sound levels shall not exceed 49 dBA or the then-existing ambient Leq, whichever level is greater, in order to take into account other noise sources then existing. To ensure compliance with this condition, noise levels shall be monitored during every such organized outdoor event by qualified personnel retained by the applicant. The noise monitoring data shall be maintained by the applicant, and such data shall be available to DDES upon request.

21. No permanent exterior public address system shall be installed on site. Temporary public address systems may be used in connection with organized outdoor events on site, subject to the sound level restrictions for such events set forth herein.
22. Informal recreational use of the subject property is permitted. No permanent equipment or structures for ballfields or other sports events (e.g., grandstands, baseball fields or backstops, soccer fields or goals, or the like) shall be placed on the subject property; provided, however, that tot-lot equipment associated with daycare activities of the church shall be permitted in close proximity to the church building. No sports events involving participants in organized sports leagues shall be permitted on site. The foregoing limitations shall not apply to the approximately 12.5 acre area identified for future subdivision on the applicant's revised site plan (Exhibit 93) if a subdivision of such area is approved.
23. Commercial deliveries, garbage pickup, and parking lot sweeping shall be prohibited between the hours of 9:00 p.m. and 7 a.m. on weekdays and Saturdays and shall be prohibited on Sundays.
24. The site shall not be used for park and ride or commuter parking, except informally when related to church sponsored activities.
25. Construction hours for the church facility, parking lots, and related facilities shown on the applicant's revised site plan (Exhibit 93) are restricted to between 7 a.m. and 7 p.m. on weekdays, between 9 a.m. and 7 p.m. on Saturdays, and are prohibited on Sundays.

MDNS Conditions

26. A natural-vegetation buffer shall be set aside for protection of the hawk nest. On the east side of the nest the buffer shall be a half circle with a minimum radius of 100 feet, and on the west side of the nest, the buffer shall be a half circle with a minimum radius of 180 feet. The hawk nest buffer shall be added to the sensitive area buffer as shown on the revised site plan and shall be subject to the notice on title per KCC 21A.24.170. No clearing or grading shall occur within this buffer except for management activities to benefit the hawk and other wildlife species. The King County Department of Natural Resources or its successor agency shall review and approve the Site Wildlife Management Plan.. The hawk nest buffer shall be shown on all building and construction plans.
27. Conifers may be planted within the hawk buffer to provide screening of the nest from the parking facilities, provided they are planted outside of the nesting season (February 1 to July 31). The planting restriction may be altered upon certification that the nesting period has ceased or that the nest is inactive during a particular year.
28. Construction activity shall be restricted within 300 feet of the hawk nest during the nesting season (February 1 to July 31). This restriction may be altered upon certification that the nesting period has ceased or that the nest is inactive during a particular year.
29. No heavy construction activity shall occur within 650 feet of the nest tree during the red-tailed hawk nesting season (February 1 to July 31). Heavy construction is defined as land clearing, tree falling, excavation, grading, road paving, or installing utility

- infrastructure. This restriction may be altered upon certification that the nesting period has ceased or that the nest is inactive during a particular year.
30. All parking and building lights shall be shielded and directed away from the nesting area.
31. For every acre proposed to be cleared under this permit, 1.8 acres shall be placed in a Conservation Easement to be held and monitored by King County. Sensitive Areas and their buffers protected by Code shall be included as part of this calculation and in the Conservation Easement area. The area placed in this easement shall be clustered around the sensitive areas and the hawk nest buffer to form a continuous polygon. No clearing or grading shall occur within this easement except to implement a Site Wildlife Management Plan approved by King County DNR. The easement goals are:
- a. To preserve and maintain habitat for the many wildlife species using the site;
 - b. To accomplish goals and objectives of the Bear Creek Basin Plan; and
 - c. To protect the functions and values of streams and wetlands.
32. The legal description for the easement area shall be surveyed and clearly marked.
33. The costs of producing the easement document shall be paid by the applicant. Costs include, but are not limited to, a level 1 environmental assessment (to determine if the easement area contains hazardous materials), title search, escrow, other closing costs, recording fees, and preparation of a wildlife management plan.
34. The Conservation Easement shall be executed by the property owner as grantor, in favor of King County as grantee, in a recordable form acceptable to the King County Prosecuting Attorney's Office. After execution and delivery to DDES, the Conservation Easement shall be filed for recording with the King County Office of Records and Elections.

ORDERED this 2nd day of July, 1999.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 2nd day of July, 1999, to the following parties and interested persons:

Mary Albino
John Altmann
Richard Aramburu
Greg & Patty Arnquist
B. Ashok

Herbert Atienza
Ralph Barber
Dale Baskett
Jeff & Michele Bennett
Diantha Berg, DDS

Ray Berry, Director, Ministry Operations
 Kelly Billington
 Dan and Debbie Blagovich
 Glenn and Mary Ann Brewer
 Bruce Buckles
 William Bullock
 Jim Calder
 Jan Caldwell
 Sam Capelouto
 Dave & Julie Chamberlain & family
 Peter Clark
 Craig and Karen Coder
 Robert & Anna Jo Compton
 Pat Cook
 Greg and Wendy Dean
 William Dennis
 Randy Edwards
 Tom Ehrlichman
 James Ferguson
 John Fiscus
 Mike Flanagan
 Clarence Flowers
 Gar Fox
 John Glancy
 Kenneth Gober
 Lori Gooch
 Richard and Deborah Goodman
 Lisa Greenlee
 Richard Gross
 Tim & Karen Grubb
 Eric Haas
 Nick Hagen
 Ken Hall
 E Kent Halvorson
 Steve Hammer
 William Hammond
 Elaine Handlon
 Frank and Dana Harrison
 Glenn Hasslinger
 Dallas Hayes
 Nick & Susie Herberger
 Bob & Janine Hoffman
 Louise Holder
 L. Erik Holmberg, DDS
 Randy Hooker
 April Hornsby

Mary Igarta
 Joseph James
 Dave Jansen
 Carol Jayne
 Larry Johnson
 Jones Residence
 Ingrid and Bjorn Karlsson
 Kim and Jerry Kearns
 Gene Keene
 Kilcup Family
 Klein Family
 Gerald Klein
 Margaret Klockars
 Wayne Lamm
 Jacque Lantz
 Jeffrey Layton
 Joseph Lewis
 Keith Logan
 Bruce Loney
 Calvin and Patty Luce
 Martha, Matthew, Julia Marino
 James Martin
 Cameron & Tracy Mastrud
 Russell & Pamela McCrum
 Mickus Family
 Everett Nelson
 Hamilton Newberry
 Jeff Nickel
 Gary Norris
 Mark Ogne
 Cliff & Diane Otis
 Ioana Park
 Terry and Donna Patane
 Norman Patterson
 Andrew Paup
 Mark Peterson
 Jon & Sherry Prescott
 Matthew & Irene Price
 Christian & Joanie Raalum
 Thomas Rengstorf
 Nina Rivkin
 Rob & Linda Robertson
 Steve and Kim Rolling
 Royce Family
 Gene Scalzo
 Marianne Schneider

Alexander & Shelley Seidel
 Gary & Patricia Shaffer & family
 Steve Shifton
 Thomas & Catherine Shives
 Smith Family
 Craig Smith
 Rich Snodgrass
 Rhonda Solberg
 Mary Lou Soleim
 Cathy Southwick
 Linda Squires
 Jack Squirts
 Linda Stalzer
 Stalzer-Spranger Land Development
 Jeff Stelzner
 Helen Stoner
 Randy and Donna Storm
 Chuck Strouss
 Richard and Sue Studer
 Dave and Marion Sutherland
 James E. Szabo
 Steve Teague

Ron Thirtyacre
 Caryn Thomas
 Carrie Tibbetts
 Sharon T. Tobin
 Vicki Todhunter
 Wilfrid T. Wainhouse
 Mark Weisman
 Lane Williams
 Craig Williamson
 Richard Wilson
 Linda & Wesley Witt
 Ron Worman
 Michael Yantis
 Kenneth & Lilian Yates
 Kim Yates
 Tom Beavers
 Greg Borba
 Fereshteh Dehkordi
 Curt Horner
 Aileen McManus
 Louise Miller

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding conditional use permit application appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

Stafford L. Smith was the Hearing Examiner in the remand proceeding. Participating at this hearing were Greg Borba, representing the County; Richard Wilson, Steve Shifton, Keith Logan, Lane Williams, Tom Rengstorf, Mark Weisman, Nick Haven and Steve Hammer.

The following exhibits were offered and entered into the hearing record June 7, 1999:

Exhibit No. R-1	Report and Decision by Hearing Examiner dated August 6, 1998
Exhibit No. R-2	Letter dated October 21, 1998, from Linda Stalzer (Stalzer/Spranger) to neighbors
Exhibit No. R-3	Letter dated November 15, 1998, from Steve Shifton to Linda Stalzer
Exhibit No. R-4	Letter dated November 19, 1998, from Linda Stalzer to Steve Shifton
Exhibit No. R-5	Landscape Buffering and Visual Impact Analysis submitted by Linda Stalzer on behalf of Timberlake Christian Fellowship on December 17, 1998
Exhibit No. R-6	Letter dated January 22, 1999, from Greg Borba (DDES) to Linda Stalzer
Exhibit No. R-7	Comment letter dated January 25, 1999, from Helen Stoner
Exhibit No. R-8	Letter dated February 1, 1999, from Linda Stalzer to Greg Borba

- Exhibit No. R-9 Building elevation drawings, received February 4, 1999
- Exhibit No. R-10 Rockery section drawings, received February 4, 1999
- Exhibit No. R-11 Additional viewshed analysis, southbound along 236th Avenue Northeast, received February 4, 1999
- Exhibit No. R-12 Letter (with attached landscaping plans) dated February 1, 1999, from Linda Stalzer to Mr. and Mrs. Fox
- Exhibit No. R-13 Letter dated February 22, 1999, from Lane Williams with enclosed visual analysis and comments to Applicant's proposal
- Exhibit No. R-14 Letter dated February 21, 1999, from Keith Logan to Greg Borba
- Exhibit No. R-15 Letter dated February 21, 1999, from Steve Shifton to Greg Borba (5 page letter)
- Exhibit No. R-16 Letter dated February 21, 1999, from Steve Shifton to Greg Borba (1 page letter)
- Exhibit No. R-17 Video tape with attached written narrative, submitted by Keith Logan on February 22, 1999
- Exhibit No. R-18 Letter dated March 2, 1999, from Linda Stalzer to Greg Borba
- Exhibit No. R-19 Schematic Landscape Buffer - Option #2, submitted by Linda Stalzer on March 3, 1999
- Exhibit No. R-20 Comment later dated January 20, 1999, from B. Ashok
- Exhibit No. R-21 Cross-section and topographic analysis submitted by Keith Logan on March 12, 1999
- Exhibit No. R-22 Additional viewshed analysis of Option #2 (from Ashok residence), submitted by Mark Weisman on March 15, 1999
- Exhibit No. R-23 Memorandum dated March 16, 1999, from Linda Stalzer to Greg Borba
- Exhibit No. R-24 Supplemental CUP Report and Decision in Response to Hearing Examiner's Remand Order, transmitted by DDES on March 19, 1999
- Exhibit No. R-25 Notice and Statement of Appeal; date of statement: April 9, 1999
- Exhibit No. R-26 Topographic model of site built and submitted by Keith Logan
- Exhibit No. R-27 Preliminary Planting Plan (Scale: 1" = 60'-0")
- Exhibit No. R-28 Aerial photograph submitted by Keith Logan (Aerolist Photographers; date flown: July 27, 1997)
- Exhibit No. R-29 Exhibit R-28 scanned and annotated by Keith Logan
- Exhibit No. R-30 Exhibit R-29 with imposed site plan drawing
- Exhibit No. R-31 (2) Photographs taken and submitted by Keith Logan
 - a View from Logans' property showing smoke rising from Stoner property
 - b View from Logans' property showing smoke rising from Stoner property (large grass area in forefront of photograph)
- Exhibit No. R-32 (2) Photographs taken and submitted by Keith Logan
 - a View from Logans' property showing plastic material in distant tree (center of photograph)
 - b View of plastic material in tree as seen from 236th Avenue Northeast - 150 feet south of Fox driveway
- Exhibit No. R-33 (3) Photographs taken and submitted by Keith Logan
 - a-c Photographs of 18" balloon as seen from Logan property
- Exhibit No. R-34 (2) Photographs taken and submitted by Keith Logan
 - a View of 18" balloon from Logan property Tea Room (spring foliage)
 - b View westward from Logan Tea Room (winter)
- Exhibit No. R-35 (2) Photographs taken and submitted by Keith Logan
 - a Daytime view north toward Microsoft Building 27 through 150-foot buffer of natural vegetation and supplemental plantings

- b Nighttime view north toward Microsoft Building 27 through 150-foot buffer of natural vegetation and supplemental plantings
- Exhibit No. R-36 (5) Photographs taken and submitted by Keith Logan
 - a Daytime view toward Microsoft Building 44 through 83-foot buffer of natural vegetation and supplemental plantings
 - b Nighttime photograph of buffer
 - c Daytime view south southwest toward Microsoft Building 44 through 90-foot buffer of natural vegetation and supplemental plantings
 - d Nighttime view south southwest toward Microsoft Building 44 through 90-foot buffer of natural vegetation and supplemental plantings
 - e Nighttime view south southwest toward Microsoft Building 44, on far side of landscape buffer (buffer behind photographer)
- Exhibit No. R-37 Photograph taken and submitted by Keith Logan of view looking west from Northeast 45th Street toward location of proposed main entrance
- Exhibit No. R-38 Photograph taken and submitted by Keith Logan of view from Northeast 236th looking northwest through wetland vegetation area
- Exhibit No. R-39 Photograph taken and submitted by Keith Logan of view looking north through Buckles' 25-foot buffer
- Exhibit No. R-40 Photograph taken and submitted by Keith Logan of balloon looking north from SR 202, past Albertson's, and north of south property line of subject property
- Exhibit No. R-41 Photograph taken and submitted by Keith Logan of Capelouto residence
- Exhibit No. R-42 Photograph taken and submitted by Keith Logan of view looking west from Capelouto driveway to proposed southern driveway
- Exhibit No. R-43 Photograph taken and submitted by Keith Logan of view west from driveway south of Capelouto driveway and toward proposed south driveway
- Exhibit No. R-44 Photograph taken and submitted by Keith Logan of neighbor's planting screen

The following exhibits were offered and entered into the hearing record June 15, 1999:

- Exhibit No. R-45 Letter dated October 24, 1996, from John F. Phillips, Union Hill Water Association, to Lawrence Houston, CAN Architecture Group
- Exhibit No. R-46 Resume of Thomas V. Rengstrof
- Exhibit No. R-47 Landscaping plans (8 sheets) at scale 1"= 20'
- Exhibit No. R-48 Resume of Mark Weisman
- Exhibit No. R-49 (2) Photographs of Ashok rockery
- Exhibit No. R-50 (4) Photographs taken by Nick Hagen June 9, 1999, of Albertson's buffer
 - a Photograph of Albertson's buffer plantings on 3-foot berm looking toward Timberlake property
 - b Close-up photograph of Albertson's buffer
 - c Continuation of Albertson's buffer showing part of parking lot and light standard
 - d View to west along northerly property line of Albertson's property
- Exhibit No. R-51 Nick Hagen notes
- Exhibit No. R-52 Civil engineering drawing used by Mr. Hagen in the field for purposes of calculating height of rockery

The following exhibits were offered and entered into the hearing record June 17, 1999:

- Exhibit No. R-53 Resume of Steve Hammer
- Exhibit No. R-54 Excerpt from transcript prepared by Seattle Deposition Reporters of July 17, 1998, hearing (pp 17-20)
- Exhibit No. R-55 Excerpt from transcript prepared by Seattle Deposition Reporters of CUP hearing (pp81-84)
- Exhibit No. R-56 (15) Photographs of Albertson's buffer submitted by Keith Logan
- a Day photograph of view through 25-foot buffer and Albertson's landscaping-obliquely
 - b Nighttime view through 25-foot buffer and Albertson's landscaping-obliquely
 - c Another nighttime view through 25-foot buffer and Albertson's landscaping-obliquely
 - d Daytime view through 25-foot buffer and Albertson's landscaping perpendicular to property line
 - e Nighttime view through 25-foot buffer and Albertson's landscaping perpendicular to property line
 - f Nighttime view through Albertson's landscaping obliquely toward Albertson's
 - g Daytime view through Albertson's landscaping
 - h Nighttime view through Albertson's landscaping
 - i Albertson's and parking lot at night
 - j View from Albertson's parking lot of balloon 30 feet high, 25 feet north of property line - winter foliage
 - k Photograph of 6-foot tarp 12 feet above ground level 25 feet north of south property line from South of SR 202
 - l Photograph of 6-foot tarp 12 feet above ground level viewed 60 feet south of property line
 - m Photograph of 6-foot tarp, 25 feet north of south property line, 12 feet above ground level, taken from Albertson's front door
 - n Photograph of 6-foot tarp, 12 feet above ground level, 25 feet within subject property taken from south of SR 202
 - o Omitted
 - p View toward subject property west of Albertson's from south of SR 202
- Exhibit No. R-57 (3) Photographs from 236th
- a East southeast view of Mills property from across 236th Avenue
 - b View of 4820 236th Avenue, facing east from 236th Avenue
 - c View toward subject property facing southwest from uphill property
- Exhibit No. R-58
- a Schematic Landscape Buffer Plan with location of section (Ex. R-58.b) marked
 - b Section drawing prepared and entered by Keith Logan showing view from south of SR 202, north toward subject property, in front of Albertson's facade
- Exhibit No. R-59 Copy of DDES GIS topographic map with Logan property and Timberlake property marked
- Exhibit No. R-60 E-mail from Doug Hogarth to Keith Logan describing Geodetic Survey marker on Logan property, with attached topographic map

Exhibit No. R-61 "Back of envelope" diagram and calculations submitted by Keith Logan
plotting view from Logan property

Exhibit No. R-62 Resume of Lane Williams

SLS:daz

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